

# SENTENCING COMMISSION

## MINUTES

<b>Committee:</b>	<b>SENTENCING COMMISSION ANNUAL MEETING</b>
-------------------	---

<b>Date:</b>	Wednesday, April 9, 2008	<b>Time:</b>	8:30am – 2:30 pm	<b>Place:</b>	Utah Law & Justice Center
--------------	--------------------------	--------------	------------------	---------------	---------------------------

<b>Members Present</b>	Paul Boyden, Gus Chin for David Brickey, K.S. Cornaby, Scott Daniels, Curt Garner, Marlene Gonzalez, Senator Jon Greiner, John Hill, Dan Maldonado, Judge Paul Maughan, Judge Gregory Orme, Robyn Williams for Tom Patterson, Kathy Reimherr, Chief Ed Rhoades, Sheriff Brad Slater, Sy Snarr, Kirk Torgensen, Robert Yeates
<b>Members Absent</b>	Judge Jeffrey Burbank, Judge Terry Christiansen, Senator Mike Dmitrich, Rep. Carl Duckworth, Judge Kimberly Hornak, Randy Kester
<b>Staff and Visitors</b>	Staff: Scott Carver, Jo Lynn Kruse, Chris Mitchell, Cuong Nguyen, Ben Peterson Visitors: Cliff Butter, Rep. Eric Hutchings, Stacey Hutchings, Jim Marchel, Dr. Moises Prospero, Adria Swindle from Utah Criminal Defense Attorneys, Mike Tanana

<b>Agenda Item:</b>	<b>Welcome and Approval of Minutes</b>
Notes:	Kay Cornaby called the meeting to order and welcomed new members Representative Lorie Fowlke who replaces Rep. Eric Hutchings. Gus Chin is representing David Brickey today. Scott Daniels made the <b>motion</b> to approve the January minutes. Robyn Williams <b>seconded</b> the motion which <b>passed unanimously</b> .

<b>Agenda Item:</b>	<b>2008 Legislative Session Update/Sentencing Changes and Enhancements</b>
Notes:	<p>The annual NASC (National Association of Sentencing Commissions) will be held August 3 – 5, 2008, in San Francisco. States with determinate sentencing are dealing with some problematic issues lately, because of some supreme court decisions invalidating their sentence structure. Another issue on the national front is the supreme court decision which stated that federal guidelines are just that (guidelines and are not mandatory). Scott referenced the following crack cocaine/powdered cocaine sentencing problem. Enacted in 1986, federal sentencing guidelines have mandated the same prison terms for people convicted of selling 5 grams of crack cocaine as someone found guilty of selling 500 grams of powdered cocaine. This disparate treatment of cocaine offenders has had quite a racial element to it since Blacks are disproportionately more likely to be incarcerated for selling crack cocaine than Whites and Hispanics are more likely to be convicted of selling powdered cocaine. Congress is going to have to address that issue and make changes. One option might be retroactive sentencing.</p> <p>Scott led discussion regarding legislation that specifically deals with sentencing issues and tracking new penalties. There is a report in the packet that lists new and enhanced/increased penalties. Prison admissions information as well as fiscal impact was provided by Cliff Butter.</p> <p><b>HB 10 – Disclosure of Identity to Police Officer</b> New Class B misdemeanor, for a person to fail to disclose the person's name when disclosure is demanded by a peace officer based on a reasonable suspicion that the person has committed, is in the act of committing, or is attempting to commit, a criminal offense. This one is important because it fills a gap in the previous law.</p> <p><b>HB 12 – Controlled Substance and Paraphernalia</b> Specifies that a plea and abeyance for the offense of production or distribution of a controlled substance is</p>

considered to be a conviction for sentencing enhancement purposes.

**HB 13 – Criminal Statute of Limitations Amendments**

Provides that prosecution of a person for any first degree felony sex offense may be commenced at any time.

**HB 14- Discharge of Firearm Amendments**

Modifies provisions relating to felony discharge of a firearm by describing conduct that constitutes a first, second, or third degree felony and describing enhanced penalties for these offenses.

**HB 19- Assault on a Police Officer**

Increases the penalty for committing a second or subsequent assault against a peace officer from a class A to a third degree felony.

**HB 23- Child and Family Protection**

Includes child abandonment as a type of child abuse. Adds new second degree and third degree felonies.

**HB 30- Vehicle Concealing Illegal Items**

Adds a new third degree and Class A.

**HB 34- Email Information Required of Sex Offenders**

Requires sex offenders who are required to register, to also provide internet identifiers.

**HB 90- Expungement Amendments**

Amends the provisions regarding time periods for Expungement to specify that in the case of multiple class A misdemeanors, 20 years must elapse before the offenses may be expunged

**HB 102- Child Abuse Homicide Amendments**

Increased 2<sup>nd</sup> degree to a 1<sup>st</sup> degree and 3<sup>rd</sup> degree to a 2<sup>nd</sup> degree.

**1sHB 119- Controlled Substance Database Amendments**

Adds a new 3<sup>rd</sup> degree felony. This law protects the information in the controlled substance database.

**1sHB 141- Identity Theft Reporting Information System Amendments**

Amends provisions in the GRAMA to provide protected status to all information collected in relation to the Identity Theft Reporting Information System.

**HB 256- Jessica’s Law**

Utah’s law is 25 to life, mandatory imprisonment for the completed crime.

**HB 314- Sexual Offenses-Definitions**

Increases 2<sup>nd</sup> degree to 1<sup>st</sup> degree.

**HB 327- Enticing a Minor by Electronic Means**

Modifies 76-4-401 Enticing a Minor over the Internet, to include text messaging.

**HB 339- Human Trafficking Amendments**

Created a new 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> degree felony.

**HB 346- Division of Real Estate Related Amendments**

New 3<sup>rd</sup> degree and Increases Class B to Class A.

**HB 492- Sex Offender Notification and Registration**

Sex Offender registration becomes 15, 25 or lifetime. Adds attempts and aggravated kidnapping to lifetime registration.

**HB 493- Stalking Amendments**

Defines “course of conduct”. Added “uses a computer, the Internet, text messaging, or any other electronic means to commit an act...” Also makes the penalty for violating a stalking injunction a third degree felony.

**SB 15- 15s4 Driving Under the Influence Amendments**

Enacts an impaired driving plea

**SB 65- Soliciting Gang Members Prohibited**

Creates the criminal offenses of intimidating a minor to join a criminal street gang, or leave a criminal street gang.

**SB 81- Illegal Immigration**

Requires a county sheriff to make a reasonable effort to determine the citizenship status of a person confined to a county jail for Bond. Creates a new Class A.

**SB 94- Burglary of a Railroad Car**

Adds to the definition “break the lock or seal on any railroad car”.

**SB 150- Criminal Penalty Revisions**

Increased 2<sup>nd</sup> degree to 1<sup>st</sup> degree.

	<p><b>SB 159- Workers Compensation Fraud</b> New Class A, 3<sup>rd</sup> degree and 2<sup>nd</sup> degree.</p> <p><b>SB 164- Computer Assisted Hunting</b> Prohibits the use of a computer or other device to remotely hunt an animal.</p> <p><b>SB 192- Sex Offense Amendments</b> Modifies the Criminal Code regarding sexual activity and unlawful sexual conduct with 16 and 17 year olds to include the taking of indecent liberties.</p> <p><b>SB 297- Animal Torture</b> Makes torture of a domestic animal (dog or cat) a felony on the first offense.</p> <p>There are two new Class B and six new Class A misdemeanors, eleven 3<sup>rd</sup> degree, three 2<sup>nd</sup> degree and 1 new 1<sup>st</sup> degree felonies resulting from the 2008 legislative session. There are no new Class B, one Class A, one 3<sup>rd</sup> degree, two 2<sup>nd</sup> degree and four 1<sup>st</sup> degree felonies <i>enhanced or increased</i>, from the 2008 legislative session.</p>
--	--

<b>Agenda Item:</b>	<b>Penalty Distributions for Selected Crimes</b>
Notes:	Scott discussed the 2008 edition of <i>Penalty Distribution for Selected Crimes</i> with a new section on weapons. The booklet serves as an educational tool and desk reference for members of the legislature and will be posted on our webpage. Copies will be given at our June meeting.

<b>Agenda Item:</b>	<b>Adam Walsh Act Update</b>
Notes:	<p>Bob Yeates spoke briefly about the Adam Walsh Act, which was signed into law in the Summer of 2006. The Act seeks to establish a sex offender registry and notification standards nation-wide. The purpose of the Act is to get control and help track sex offenders moving from state to state. There are three tiers: Tier I is the lowest level and requires sex offenders to register once per year for 15 years. Tier II is the middle level and requires sex offenders to register every six months for 25 years. Tier III is the highest level and requires sex offenders to register every 90 days for life. Utah has decided to create the best public policy possible. In some ways, our format is more restrictive than Adam Walsh, but in some cases it is less.</p> <p>Failure to comply with the Act will result in a cut in federal funds (about \$130,000 for Utah). However, total compliance could end up costing us a million or more. Rep. Paul Ray sponsored HB 492 – Sex Offender Notification and Registration this last session. HB 492 is the product of over a year’s work to overhaul Utah’s Sex offender Registry both to improve the quality and accuracy of the information and to move towards compliance with the federal Adam Walsh Act. The Utah Department of Corrections has secured federal funds to develop a new sex offender registry computer system.</p> <p>One of the primary concerns in developing a sex offender registration policy is to make it strict enough to deter sex offenders from other states from moving into Utah. It is well known that offenders “shop around” asking various states regulations, in search of a less restrictive environment. If a sex offender moves to Utah from any other state, they have to comply with our rules or the other state’s rules, if they are more restrictive.</p> <p>The area of the Adam Walsh Act (AW) that we clearly deviated from was the juvenile sex offender portion. AW treats adult and juvenile sex offenders the same. Also, the retroactive portion of AW is problematic and has constitutional issues.</p>

<b>Agenda Item:</b>	<b>Adult Sentencing and Release Guidelines Update</b>
Notes:	The guideline needs to be updated each year after the legislative session. Scott has updated it with the latest changes and the new edition will be published on May 5th. The PSI forms have been posted on the sentencing commission website and will benefit PSI writers.

<b>Agenda Item</b>	<b>Jessica's Law</b>
Notes:	Paul Boyden spoke about Jessica's law, how it started with a case in Florida and about the coverage it received on shows like Oprah and Bill O'Reilly. A lot of states have adopted the law, which has a mandatory sentence of 25 years. Utah has indeterminate sentencing that has a lot more flexibility, allowing for sentences longer than 25 years. Utah's Jessica's Law is 25 to Life, mandatory for the completed crime. There are mitigating factors built in also. Time will tell if the new law work for Utah.

<b>Agenda Item</b>	<b>Recognition of Departing Members</b>
Notes:	During lunch break, Representative Eric Hutchings was recognized for his service on the Sentencing Commission from 2005 – 2008.

<b>Agenda Item</b>	<b>Sentence Inflation Study – Mike Tanana &amp; Dr. Moises Prospero</b>
Notes:	<p>Mike Tanana presented findings from his and Dr. Prospero's studies on sentencing inflation. Two questions studied were: "Do specific statute changes play a crucial role in influencing the prison population in Utah" and "What would the prison population be if we had unlimited capacity"? The conclusions of the study are:</p> <ul style="list-style-type: none"> <li>▪ Utah has middle-low incarceration rate (but should keep in mind that it is in comparison with many southern states that incarcerate almost 1% of the entire population).</li> <li>▪ Utah's lower incarceration rate <i>may</i> be explained, partially, by its lower incidence of <i>violent crime</i>.</li> <li>▪ Also, lower incarceration rate is due to <b>lower Length of Stay</b> and <b>percent of felony offenders</b> incarcerated in Utah. Even if we incarcerated 100% of our felony offenders (at 12 months) we still wouldn't be at the national average.</li> </ul>

<b>Agenda Item</b>	<b>Prison Growth – Cliff Butter</b>
Notes:	Utah has a high recidivism rate; however, fifty percent of parolees violate parole in the first year due to technical violations, not a new crime. Since 2005 there has been about a 4.6% decrease in total prison admissions. The Department of Corrections is developing a Parole Violator Center. The Board of Pardons could then send the parole violator to the center for 90 to 120 days to specifically work on the condition of parole that is giving them a problem.

Agenda Item	Wrap Up/Future Topics Discussion/Calendar Future Meetings
Notes:	<p>Scott spoke briefly on the Mental Health Initiative Committee that has been meeting since August 2007. The group consists of individuals from: Legal Defenders, Judges, Law Enforcement, Department of Corrections, Salt Lake County Jail, Legislators, Utah Attorney General's Office, Salt Lake County Mental Health, Utah Division of Substance Abuse/Mental Health, Valley Mental Health, the Utah Chapter-National Alliance for Mental Health and others. Their focus is on mentally ill offenders and how to work with them more effectively. The committee will now prioritize needs and make recommendations to policy makers.</p> <p>Future topics of discussion:  Misdemeanor Guidelines  Juvenile Justice Philosophy Statement  Re-Evaluate Juvenile Sentencing Guidelines  Sex Offender Registration Oversight  Victim Services  PSI Evaluation  Civil Commitment of Sexual Predators</p> <p>Please contact Scott if you have anything to add to the above list.</p> <p>Future meeting dates are: June 4, August 6, September 3 and November 5.</p>

**The next meeting is scheduled for Wednesday, June 4, 2008 at noon, Utah State Capitol Complex, East Office Bldg. Beehive Room**

Minutes prepared by Jo Lynn Kruse – Administrative Assistant, CCJJ